

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

Arizona Broadcasters Association, et al.,  
Plaintiffs,  
v.  
Mark Brnovich, in his official capacity as  
Attorney General for the State of Arizona, et  
al.,  
Defendants.

No. CV-22-1431-PHX-JJT

**[PROPOSED] ORDER FOR  
PERMANENT INJUNCTION AND  
DECLARATORY JUDGMENT**

For the reasons set forth on the record at the hearing on Plaintiffs' request for a Preliminary Injunction, which this Court will treat as a trial on the merits under Rule 65(a)(2), and in Plaintiffs' Complaint and Motion for Preliminary Injunction, which Defendants did not challenge on the merits, it is hereby **ORDERED** that Plaintiffs' requests for a Permanent Injunction and a Declaratory Judgment are **GRANTED** as to Defendant Mark Brnovich, in his official capacity as Attorney General for the State of Arizona. The Court finds that he is a proper party to this action because he admits he could enforce the challenged law, which on its face violates the First Amendment of the United States Constitution.

**Permanent injunction**

- A. This Court has jurisdiction over this matter under Article III, § 2 of the United States Constitution and 28 U.S.C. §§ 1331 and 1343.
- B. The Court finds that the Attorney General has not challenged the merits of Plaintiffs' assertions, and that the entry of an injunction is proper under 42 U.S.C. § 1983 because A.R.S. § 13-3732 violates the First Amendment of the United States Constitution as applied to the states through the Fourteenth Amendment.

1 C. It is hereby **ORDERED** that Mark Brnovich, in his official capacity as Attorney  
2 General for the State of Arizona, and any others acting in concert or participation with  
3 him who receives actual notice of this injunction, are hereby permanently restrained  
4 and enjoined from: 1) enforcing A.R.S. § 13-3732 in any manner against any person  
5 or entity; or 2) using an alleged violation of A.R.S. § 13-3732 as an excuse,  
6 justification, or reason to punish or otherwise take or fail to take any action adverse to  
7 the interests of any person or entity.

8 D. This Court shall retain jurisdiction over this action for the purpose of implementing  
9 and enforcing this Permanent Injunction.

10 **Declaratory Judgment**

11 A. This Court declares A.R.S. § 13-3732 unconstitutional as a violation of the First  
12 Amendment to the United States Constitution, applied to the states through the  
13 Fourteenth Amendment, because:

- 14 1. As every Circuit Court to examine the issue has held, people have a fundamental  
15 First Amendment right to record police officers while they are performing their  
16 duties.
- 17 2. The statute is a content-based restriction because it applies only to recording the  
18 police and not to other speech that could be conducted on the same device at the  
19 same location.
- 20 3. The statute creates a disfavored “floating buffer zone” of 8 feet in every direction  
21 around every police officer, which would be virtually impossible to comply with  
22 in dynamic or crowded situations and therefore is not a reasonable “time place and  
23 manner” restriction.
- 24 4. The statute cannot withstand strict or intermediate scrutiny because no government  
25 interest has been identified by defendants, the law prohibits or chills a substantial  
26 amount of First Amendment protected activity, and the law is unnecessary because  
27 interfering with police activity is already a criminal offense.

1 B. This Court declares A.R.S. § 13-3732 unconstitutional as a violation of the First and  
2 Fourteenth Amendments to the United States Constitution because:

- 3 1. The statute is unconstitutionally vague because it fails to address the length of time  
4 a warning is valid and does not address a situation in which contradictory orders  
5 are given.  
6 2. The statute gives individual officers unlimited discretion to determine who violates  
7 the law by choosing who to warn against recording.

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9 Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

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12 Judge John J. Tuchi  
13 United States District Judge  
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